IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY APPEAL NO. 16 OF 2005
IN
COMPANY PETITION NO. 21 OF 2002

Simshah Estates and Tradg.Co.
Private Ltd and Ors. ...Appellants
(Orig.Resp)
vs.
Navin Ramji Shah and Ors. ...Resp
(Orig.Petitioners)

W I T H
COMPANY APPEAL NO. 17 OF 2005
IN
COMPANY PETITION NO. 21 OF 2002

Simplex Engineering and Foundry
Works P.Ltd and Ors. ...Appellants
(Orig.Resp)
vs.
Navin Ramji Shah and Ors. ...Resp
(Orig.Petitioners)

W I T H
COMPANY APPEAL (L) NO. 1 OF 2005
IN
COMPANY PETITION NO. 21 OF 2002

Complex Trading Co.Ltd ...Appellants
(Orig.Resp)
vs.
Navin R Shah and Ors. ...Resp
(Orig.Petitioners)

Mr. R.A. Kapadia with Mr. Arif Doctor i/b. Dhruv Liladhar and Co. for Appellants. in Appeal No. 16/05 and 17/05.

Mr. U.K. Chaudhary with Mr. Shyam Divan, Ms. P.L. Bachhani and Ms. Ranjana Roy i/b. I.R. Joshi and Co. for Resp no.1.

Mr. P.A. Samant with Mrs. U.K. Dhanukar and Mr. Ashish Panikar i/b. Khaitan and Jaykar for Respondent no.2 and 3.

Mr. D.J. Khambatta with S.N. Fadia for the appellants in Appeal (L) 1/05.

Mr. U.K. Chaudhary with Mr. Shyam Diwan, Ms P.L. Bachhani and Ms. Ranjana Roy i/b. I.R. Joshi and Co. for Resp. no.1 to 3.

Mr. Rohit Kapadia with Arif Doctor i.b. Dhruv Liladhar and Co. for Resp. no.4 to 12.

CORAM: S.U. KAMDAR, J,

DATE : 15TH JULY,2005.

JUDGMENT :

1. The Appeals No. 16 of 2005 and 17 of 2005 arising out of the common order passed by the Company Law Board in two Company Petitions being Company Petition No. 11 of 2003 which is

in respect of a Company known as Simshah Estates Trading Company Private Limited whereas Company Petition No. 21 of 2003 is in respect of Simplex Engineering and Foundry Work Limited The Respondent Nos. 1 to 3 i.e. Navin Ramji Shah and his group are common Respondents in both the aforesaid appeals. These two appeals are arising in the aforesaid two company petitions which has been preferred by Respondent nos. 1 to 3. The third appeal has been filed by one Complex Trading Private Limited who is claiming that they are affected parties by virtue of the impugned orders in the aforesaid two appeals passed by the Company Law Board in the aforesaid two Company Petitions. All the parties have agreed before me that the decision in the case of one of the Company Appeal would decide all the company appeals as the facts of that case are materially identical in both the said company petitions. Some of the brief facts in the background of which the present appeals arise are briefly enumerated are as under :

2. The appellant company namely Simshah Estates is a private limited company which was incorporated some time on or about 29.10.1984. The authorised capital of the company was Rs.10,00,000/- consisting of 8,000 equity shares of Rs.100/- each and 1% redeemable preference shares of Rs.100/- each and 1000 2% redeemable preference shares of Rs.100/- each together aggregating to 2,00,000. Out of the aforesaid 8,000 equity shares of Rs.10/- each are issued and fully paid off. The basic object of the company was to carry on business of developing and dealing in properties and to purchase, acquire, sell, dispose off and deal in movable and immovable properties of various kinds and there are various other ancillary objects of the said company.

3. According to the respondent no.1 the shareholding of Navin Ramji Shah group which comprises of Navin Ramji Shah, his wife Smt. Chandri Navin Shah and Navin R. Shah (HUF)

were as under : Navin Ramji shah was holding 251 equity shares, Chandri Navin Shah was holding 655 equity shares and Navin Ramji shah (HUF) was holding 3258 equity shares of which Navin Ramji Shah was the ‘Karta’. Thus the Respondent nos.1 to 3 were holding a substantial shareholding constituting about 51.53% of the total fully paid shares in the company. The Respondent no.1 to 3 were therefore the majority shareholders of the said company. The respondent no.1 was also appointed as a Director of the said company. Other shareholders are all family members of Respondent nos.1 to 3 and are thus associated in the said private limited company. The other group of the shareholders also have its own directors on the board of the company. They have five directors and the Chairman of the company was one Mr. Hiralal B. Shah. The respondent no.1 was the permanent director of the company under the Articles of Association of the said company. It was the case of the respondent no.1 before the Company Law Board

that though he is holding a majority stake in the said company namely 51.53% he has been ignored by the minority shareholder and behind his back the board of directors have been conducting the business of the company without giving him notice of the Annual General Meetings held in the said company and particulars of information pertaining to the accounts of the said company are not furnished to the respondent no.1. It is an admitted position before me that prior to 8.9.1998 there were no disputes between the parties. However it is the case of the Respondent no.1 that he was isolated and no material information was furnished to him in respect of the affairs of the company. It is his case that to his utter surprise he found that an Annual General Meeting was held on 30.9.1998 and a special resolution was passed by which the preference shareholder of the company was reclassified from 1% redeemable preference shares of Rs.100/- each to 2,000 equity shares of Rs.100/- each. By the said resolution Clause-5

of the Memorandum of Association and Clause-6 of the Articles of Association were altered by the company. It is his case that he was given no notice of any such meeting for passing resolution of reclassifying the shares or for alteration of the Memorandum and Articles of Association of the company. It is his case that he was holding 51.53% of the share capital of the company and was infact a majority shareholder and without his consent the aforesaid resolutions were passed. It is further case of the Respondent no.1 that 1500 shares were allotted to a company known as Complex Trading Private Limited which is infact owned and controlled by the respondent group and by allotting the said shares the shareholding of the petitioners which is 51.53% is diluted and he has been made a minority shareholder.

4. It is his further case that the aforesaid facts were discovered after inspecting the records of the company on

21/22.12.1998 and thereafter he has filed the said petition before the Company Law Board. In the said petition before the Company Law Board the Respondent nos.1 to 3 have challenged the resolution passed in the 14th Annual General Meeting converting the preference shares into equity share capital and amendment of the Articles of Association and Memorandum of Association of the company as illegal and with no legal effect and various other injunctions and declarations are sought. One of the injunctions which has been sought under prayer (d) of the said petition reads as under :

> "d. Declaration that the allotment of 1500 equity shares of Rs.100 each by the company to M/s. Complex Trading Co. Ltd is illegal and void".

5. He has contended that the company passed a resolution in its meeting held on 30.9.1998 of which he was given no notice and inrespect of the minutes of the meeting of the said date no recording is available. Thus it is the case of the Respondents in a nutshell

that by a fraudulent manner they were made a minority shareholders from the original holding of 51.53% which was a majority shareholding in the company. In support of his arguments that he never attended that the said meeting of the company nor any notice was given to Respondents no.1 to 3 he has relied upon his passport to indicate that at the relevant time he was not in India and the minutes noting his presence is ex-facie fabricated and without any merits.

6. On the other hand it is the case of the Appellant before the Company Law Board that Respondent Nos.1 to 3 are entitled to no relief. It is their case that the dispute arouse between Respondent no.1 and the Appellant group sometime in or about June 1998 and in February, 1999 an oral family arrangement has been entered into between respondent no.1 and the appellant group wherein Respondent nos.1 to 3 has agreed to give up the appellant company and surrender their shares and holdings in favour of the Appellant no.2

and his group. It is their case that in view of the fact that the respondents nos.1 to 3 were seeking to come out of the company that the reclassificatiion of shares was required and the necessary changes were made by passing a resolution on 30.9.1998 and notice of such meeting was given to Respondent nos.1 to 3 herein. It is the case of the respondent that the petitioner is not entitled to continue the said company in view of the fact that the Respondent no.1 himself desired to come out of the company. Thus the Respondent nos.1 to 3 have filed a petition under s. 397 and s. 398 of the Companies Act claiming mismanagement in the affairs of the appellant company by forging, fabricating and manipulating the records of the company and unlawfully and illegally passing various resolutions behind the back of the Respondent nos.1 to 3 herein.

7. On these rival allegations the parties were heard by the company law board and the company law board by its order dated 21.10.2004 held

that the board meeting held on 1.9.1998 and 20.11.1998 and passing of a resolution of allotment of 1500 equity shares as well as amendment to the Memorandum and Articles of Association are null, void and illegal. It was further held that the issue of allotment of 1500 equity shares to M/s. Complex Trading Private Limited is also null and void and the same stands cancelled. The company law board has further while passing the aforesaid order held that if either of the parties are willing to part with their shares then the other party can purchase the said shares on valuation to be made by an independent valuer and the valuation of assets of the company will be made as on 31.3.1998. In the meantime there shall be status-quo with regard to properties of the company being movable and immovable properties. With the aforesaid directions the said company petitions were disposed off by the Company Law Board. Challenging the aforesaid order these two company appeals being Company Appeal No. 16 of 2005 and Company Appeal No. 17 of 2005

are preferred before this court under section 10(f) of the Companies Act. The Complex Trading Company has also preferred an appeal challenging the order passed by the Company Law Board in Company Petition No. 21 of 2005 being Company Appeal (L) No. 1 of 2005. Pending the aforesaid appeal this court directed the parties to maintain status-quo. However it is the grievance of the appellant that contrary to the order of status-quo passed by this court the company law board proceeded with a valuation of the shares held by respondents no.1 to 3 and by an order dated 25.11.2004 appointed a valuer M/s. Bastawala and Associates as an independent valuer of the properties of the company and consequently for determination of the valuation of the said shares. The company law board has purpotedly held in the order dated 25.11.2004 that there is no stay of the proceedings before the Company Law Board and only parties are directed to maintain status-quo and therefore according to the Company Law Board a valuer can be

appointed. This order dated 25.11.2004 is also the subject matter of challenge in Company Appeal No. 17 of 2005 in Company Petition No.11 of 2003. All the parties before me have agreed that the Company Appeal No. 16 of 2005 can be taken up for hearing as the issues raised in Company Appeal No. 17 of 2005 being identical to the orders passed therein would govern the said Company Appeal No. 17 of 2005. M/s. Complex Trading Private Limited who has filed its own appeal has conceeded that the issues raised in Company Appeal No. 16 of 2005 are identical to that of the contentions of the appellant and therefore can be disposed off together.

8. I have heard the parties at length. Mr. Rohit Kapadia learned counsel appearing on behalf of Appellant in Company Appeal No. 16 of 2005 and 17 of 2005 has framed before me two questions of law for my consideration under section 10(f) of the Companies Act. The said questions of law formulated by the learned

counsel are as under :

(i) Whether the company law board was in law justified in passing the impugned order without first arriving at a finding of oppression and mismanagement as claimed by the petitioner and thus assuming jurisdiction under s.394 and 398 of the Companies Act.

(ii) Whether the company law board was justified in nullfying the allotment of shares in favour of Complex Trading in view of the fact that admittedly the Complex Trading Private Limited were not a party to the company petition and were not heard by the Board and therefore no order could have been passed affecting their rights in the said allotment of shares ?

9. Learned counsel appearing for Complex Trading in support of his Company Appeal has also raised identical question of law as question (b) above and has challenged the said order passed by the company law board and has contended that the said order suffers from gross irregularities and illegality and therefore the said order is required to be set aside.

10. Learned counsel Mr. Kapadia insupport of his contentions has contended that for the Company Law Board to assume a jurisdiction and pass orders under s.397 and 398 it is necessary first to come to the conclusion or give a finding that there is an oppression of the Respondent no.1 to 3 group of shareholders or there is a mismanagement in the affairs of the company. Learned counsel has contended that in the entire order dated 21.10.2004 the company law board has given no such finding. It has been brought to my attention that the findings of the company law boards are only given in para-20 and 21 of the said orders. It has been contended

that in niether of two paras-20 nor 21 which contains the final order of the company law board is there is anything to even suggest that the company law board has come to the conclusion and/or satisfied itself that there is mismanagement in the affairs of the appellant company and/or oppression of the Respondent nos.1 to 3 as a shareholders and thus the company law board has no jurisdiction under s. 397 and 398 of the Act to pass various orders. It has been contended by the learned counsel for the Appellant that in the rest of the order the company law board has merely set out the rival contentions of the parties and has not given any finding. On the other hand the learned counsel for Respondent nos.1 to 3 has contended that the order speaks for itself and when the company law board has come to the conclusion that there is a fraudulent minutes of the meeting held on 30.9.1998 and the minutes prepared are illegal. According to him this itself amounts to a finding that there has been a mismanagement in the affairs of the company with an object to oppress the majority shareholder of the company and thus the Company Law Board has rightly

exercised its jurisdiction under s. 397 and 398 of the Company's Act. Learned counsel for Respondent nos.1 to 3 has taken me through the various contentions which are recorded by the company Law Board in the judgment and contended that ultimately the contention before the Company Law Board as emerges from the facts of the case is that there has been mismanagement in the affairs of the company with an intention to reduce the majority shareholder to a minority shareholder. This has been sought to be achieved in a most fraudulent manner and consequently both the ingredients that there has been mismanagement in the affairs of the company as well as it is calculated for oppressing the majority shareholder has been duly satisfied.

11. In so far this argument is concerned my attention was also drawn to a recent judgment of the apex court in the case of **Sangramsinh P. Gaekwad and Ors. vs. Shantadevi P. Gaekwad (Decd) by Lrs. and Ors. reported in 2005 Vol 123 CC page 567** particularly the following portion of the judgment :

> " Relief must be granted having regard to the exigencies of the situation and the court must arrive at a conclusion upon analyzing the materials brought on record that the affairs of the company were such that it would be just and equitable to order winding up thereof and that the majority acting through the board of directors by reason of abusing their dominant position had oppressed the minority shareholders. The conduct, thus complained of must be such so as to oppress a minority of the members including the petitioners vis-a vis the shareholders which a fortiori must be an act of the majority. Furthermore, the fact situation obtaining in the case must enable the court to invoke just and equitable rules even if a case has been made out for winding up for passing an order of winding of the company but such winding up order would be unfair to the minority members.

12. On perusal of the order of the company law board it is clear that there is no finding specifically arrived at by analysing the evidence and or material to hold that there is an oppression of the respondent no.1 to 3 and/or mismanagement in the appellant company so as to call for exercise of jurisdiction under section 397 and 398. At the same time on looking to the order passed by the company law board and the allegations by the rival parties

it is clear that there is sufficient material of an oppression of the respondent no.1 to 3 and/or mismanagement in the affairs of the appellant company by practising fraudulent methods in reducing the majority shareholder to a minority shareholder. There are other various serious allegations as well. But in view of the fact that the company law board has not come to a specific finding I am of the opinion that the matter is required to be remanded back to the company law board for considering the said material and arriving at a conclusion by analysing the evidence on record.

13. Similar is the situation in so far as the second contention is concerned the learned counsel for the appellant as well as the learned counsel for the Complex Trading Private Limited has contended that Complex Trading Private Limited is a necessary and a proper party and no relief of the nature which has been granted by the company law board could have been granted without giving hearing to Complex Trading Private Limited. Learned counsel has contended that the fact that prayer (d) was prayed

for by the respondent no.1 to 3 in their company petition it was incumbent upon them to join the said Complex Trading Private Limited as a party to the said proceedings because no order or a relief granted to the petition would directly and substantially affect the rights of the said Complex Trading Private Limited. However inspite of the said fact Respondent nos.1 to 3 failed to join the said Complex Trading Private Limited as party to the said company petition.

14. On the other hand the learned counsel for the respondent has contended that Complex Trading Private Limited is not a necessary and proper party because it is the resolution of the company which is under challenge. Once the said resolution fails then automatically the consequence of allotment of shares covered by the said resolution would be null and void and they would not be entitled to claim any right in respect of the said shares. I am not inclined to accept the aforesaid contention and I am of the opinion that the Complex Trading Private Limited ought to have been heard before passing any

such order nullifying the resolution of which they were the beneficiaries. At the same time it is not possible to permit the said resolution to operate and the benefit of the same can be permitted to flow in favour of Complex Trading Private Limited. I am also not inclined to permit the said resolution to operate merely on technical ground that Complex Trading Private Limited is not heard by the Company Law Board. Prima-facie it is obvious that the said resolution is totally fraudulent and could not have been passed so as to vitally affect the rights of the respondent nos.1 to 3 and switch him over from a majority shareholder to the minority shareholder. The matter is required to be heard again by the company law board and at such a hearing the Complex Trading Private Limited ought to be heard to the extent of validity of the said resolution under which the allotment of shares is effected in their favour.

15. Under the aforesaid circumstances I am of the opinion that the following order should be passed in the interest of justice between the parties.

(i) Both the orders passed by the Company Law Board are hereby set aside and the matter is remanded back to the Company Law Board for hearing afresh. The company law board shall give notice to Complex Trading Private Limited as well as the parties to the proceedings and fix the date of the hearing of the said company petition on remand.

(ii) The Company Law Board shall fix the date for hearing of the matters as expeditiously as possible and in any event within a period of one month from the date of the receipt of this order. The Company Law Board shall thereafter hear the parties and dispose off the said company petitions by specifically giving a finding as to

whether there has been oppression of the respondent no.1 to 3 as shareholder of the company and/ or mismanagement in the affairs of the appellant company as claimed by the Respondent no.1 to 3 or not.

(iii) The company Law Board will decide the matter without being in any way influenced by any of the observations made in the present order and the company Law Board will decide the matter on merits and in accordance with law. The Company Law Board will hear the petitions as expeditiously as possible and in any event complete the hearing within a period of 4 months of the receipt of the present order.

(iv) Though both the said orders impugned are set aside it is directed that the parties shall

maintain complete status-quo till the hearing and final disposal by the Company Law Board of the present petitions which are remanded by this order. This status-quo shall pertain to all the properties of both the companies, its board of Directors and its share capital structure and holdings of each of the parties and shareholders.

(v) The Company Board shall not undertake or continue the exercise of valuation of the shares of the appellant companies till and until the matter is finally heard on remand.

(v) All the three appeals are disposed off accordingly. However there shall be no order as to costs.

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